

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RONALD BANKS,

Petitioner,

Civil No. 2:06-CV-14522

HONORABLE PATRICK J. DUGGAN

v.

MICHIGAN DEPARTMENT OF
CORRECTIONS,

Respondent,

OPINION AND ORDER OF SUMMARY DISMISSAL

Petitioner Ronald Banks (“Petitioner”), presently confined at the Brooks Correctional Facility in Muskegon Heights, Michigan, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 on October 16, 2006. On October 19, 2006, Magistrate Judge R. Steven Whalen signed an “Order to Correct Deficiency,” in which Petitioner was ordered to submit the \$ 5.00 fee for filing a habeas corpus petition or an application to proceed *in forma pauperis* within twenty one days of the order. As Petitioner has failed to comply with the order, his petition for writ of habeas corpus is dismissed without prejudice.

If a prisoner seeking habeas corpus relief fails to comply with a district court’s directions in a deficiency order indicating that the prisoner must pay the full filing fee or provide the required documentation to apply to proceed *in forma pauperis*, the district court must presume that the prisoner is not a pauper, assess the full filing fee, and dismiss

the case for want of prosecution.¹ See *Gravitt v. Tyszkiewicz*, 14 Fed. Appx. 348, 349 (6th Cir. 2001)(citing *McGore v. Wigglesworth*, 114 F. 3d 601, 605 (6th Cir. 1997)). In this case, the deficiency order clearly stated that Petitioner was required to submit either the \$5.00 filing fee or an application to proceed *in forma pauperis*. The deficiency order also expressly warned Petitioner that failure to comply with the order could result in the dismissal of his action. Because Petitioner failed to pay the filing fee or submit the required application to proceed *in forma pauperis*, his petition is subject to dismissal for want of prosecution. *Gravitt*, 14 Fed. Appx. at 349.

Accordingly,

IT IS ORDERED, that the Petition for Writ of Habeas Corpus is **DISMISSED WITHOUT PREJUDICE**.

DATE: December 13, 2006

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copy to:
Ronald Banks, #225311
Earnest C. Brooks Correctional Facility
2500 S. Sheridan Drive
Muskegon Heights, MI 49444

¹The Sixth Circuit indicated in *McGore* that a prisoner should be granted thirty days to pay the \$5.00 filing fee or submit an application to proceed *in forma pauperis*— as opposed to the twenty one days set forth in Magistrate Judge Whalen’s deficiency order. Nevertheless, Magistrate Judge Whalen entered the deficiency order more than fifty days ago and Petitioner still has not cured the deficiency.